

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
KANSAS CITY DIVISION**

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| In re:<br><br>BLUE ST. JOE REFINING, LLC, a Missouri<br>limited liability company,<br><br>Debtor. | Case No. 15-42231-abf11<br><br>(Proposed Lead Case)<br><br>Chapter 11 |
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| In re:<br><br>BLUE SUN ENERGY, INC., a Colorado<br>corporation,<br><br>Debtor.<br><i>(Request for Joint Administration Pending)</i> | Case No. 15-42232-11<br><br>Chapter 11 |
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| In re:<br><br>BLUE SUN BIODIESEL, LLC, a Colorado<br>limited liability company,<br><br>Debtor.<br><i>(Request for Joint Administration Pending)</i> | Case No. 15-42233-11<br><br>Chapter 11 |
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| In re:<br><br>BLUE SUN ADVANCED FUELS, LLC, a<br>Colorado limited liability company,<br><br>Debtor.<br><i>(Request for Joint Administration Pending)</i> | Case No. 15-42234-11<br><br>Chapter 11 |
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**DECLARATION OF JERRY WASHBURN IN SUPPORT OF DEBTORS' CHAPTER 11  
PETITIONS AND FIRST DAY MOTIONS**

This Declaration is filed by Jerry Washburn on behalf of Blue Sun St. Joe Refining, LLC ("Blue Sun St. Joe"), Blue Sun Energy, Inc. ("Blue Sun Energy"), Blue Sun Biodiesel, LLC ("Blue Sun Biodiesel"), and Blue Sun Advanced Fuels, LLC ("Blue Sun Advanced Fuels") and together with Blue Sun St. Joe, Blue Sun Energy, and Blue Sun Biodiesel, the "Blue Sun Debtors" in connection with their voluntary Chapter 11 bankruptcy cases.

1 I, Jerry Washburn, declare as follows under penalty of perjury under the laws of the  
2 United States of America:

3 1. I am the Chief Financial Officer, Vice President, and a Director of Blue Sun  
4 Energy. I am thoroughly familiar with all aspects and operations of the Blue Sun Debtors,  
5 including the day-to-day operations, business affairs, and books and records.  
6

7 2. On July 31, 2015, (the "Petition Date"), the Blue Sun Debtors each filed a  
8 voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§  
9 101 *et seq.* (as amended, the "Bankruptcy Code") commencing the above captioned chapter 11  
10 cases (the "Related Cases") in this Court. The Blue Sun Debtors continue in possession of their  
11 property and the management of their business as debtors-in-possession pursuant to sections  
12 1107 and 1108 of the Bankruptcy Code.  
13

14 3. To enable the Blue Sun Debtors to operate more effectively and efficiently, and to  
15 avoid the adverse effects of their chapter 11 filings, various types of relief are requested in "first  
16 day" motions filed with the Court along with this Declaration.

17 4. I submit this Declaration in support of the first day motions and the voluntary  
18 petitions filed by the Blue Sun Debtors. Any capitalized term not expressly defined herein shall  
19 have the meaning ascribed to that term in the relevant first day motion. Except as otherwise  
20 indicated, all facts stated in this Declaration are based upon my personal knowledge, my review  
21 of the relevant documents, or my opinion based upon my experience and knowledge of the  
22 business operations and financial affairs of the Blue Sun Debtors. If I am called upon to testify, I  
23 could and would testify competently to the facts set forth herein. I am authorized to submit this  
24 Declaration on behalf of the Blue Sun Debtors.  
25  
26

**Background**

5. Originally founded in 2001 as SunFuels, Inc., Blue Sun Energy introduced biodiesel into the existing petroleum fuels pool by focusing on an integrated approach to addressing market needs. This approach included reducing the cost of feedstocks through the development of alternative feedstocks, operating biodiesel production facilities that yield the highest quality fuel in the world, researching and developing industry-leading biodiesel-specific fuel additives, and efficiently distributing biodiesel with control and oversight throughout the downstream value chain.

6. In 2004, Blue Sun Energy developed the proprietary Fusion™ brand of biodiesel fuel. This fuel took high-quality B100 fuel and blends it to customer specifications and backed the product with Blue Sun industry-leading QA/QC policies, proprietary Blue Sun Fusion™ additive packages, and blending technology to ensure high-quality, differentiated Blue Sun Biodiesel is consistently available throughout our Fusion™ distribution network.

7. In 2012, Blue Sun St. Joe Refining began operating its St. Joe refinery to produce high-quality biodiesel for wholesale distribution. Early in 2012, Blue Sun Biodiesel also established a downstream terminal presence for biodiesel blending in Knoxville, TN.

8. The Blue Sun St. Joseph Refinery is potentially one of the most efficient biodiesel plants in the U.S. and has produced the highest quality B100 biodiesel, exceeding ASTM specifications. The Blue Sun Debtors currently are implementing a new biodiesel refining technology in this plant that creates very high quality biodiesel at potentially significantly lower cost than current biodiesel refining technologies. Once this upgrade is complete on this operational plant, it will be one of the most advanced biodiesel facility in the world.

9. At Blue Sun Biodiesel's terminal operation in Knoxville, Tennessee wholesale

1 customers can load-out any blend, from B1 to B100, automatically ratio blended at the rack.

2 This facility is located at the Cummins Terminal in Knoxville, TN.

3 10. As part of its long-term strategic plans, the Blue Sun Debtors are continuously  
4 investigating opportunities in the future of alternative renewable liquid fuels. In the past the  
5 company has been involved in large algae R&D projects, agriculture and biofuel feedstock  
6 development, biodiesel fuel technologies to increase cold flow and other biodiesel performance  
7 factors, and more.

9 11. Blue Sun Advanced Fuels owns and operates a 1.5 million gallon per year  
10 demonstration plant designed and built for the purposes of producing 100% compatible  
11 petroleum equivalent renewable diesel and jet fuel for testing and certification for use in military  
12 and commercial applications.

13  
14 **Ownership Structure and Management**

15 12. Blue Sun Energy, Inc. is a privately owned Colorado corporation. Shareholders  
16 owning 5% or more of the stock of Blue Sun are Juniper Resources, LLC (33.98%), Leigh  
17 Freeman (5.37%), Sean Lafferty (5.16%), and Dr. Michael Gorton, M.D. (7.33%). Blue Sun  
18 primarily is a holding company, the primary asset of which is stock of the related operating  
19 subsidiaries.

20  
21 13. Blue Sun Biodiesel, LLC is a Colorado limited liability company owned 99% by  
22 Blue Sun Energy. The remaining one percent interest is owned by Blue Sun Producers, Inc. and  
23 Progressive Producers Non-stock Cooperative. Blue Sun Biodiesel sells and distributes biodiesel  
24 on a wholesale basis from the Cummins Terminal in Knoxville, TN under exclusive supply  
25 agreement terms with Cummins Terminals, Inc.

26 14. Blue Sun St. Joe's Refining, LLC is a Missouri limited liability company 100%

1 owned by Blue Sun Biodiesel. Blue Sun St. Joe's Refining operates the companies' primary  
2 biodiesel plant located in St. Joseph, Missouri.

3 15. Blue Sun Advanced Fuels, LLC is a Colorado limited liability company owned  
4 80% by Blue Sun Energy. The remaining 20% is owned by Gorton Research Enterprises, LLC  
5 (10%) and Juniper Resources, LLC (10%). Blue Sun Advanced Fuels owns and operates the  
6 assets related to a 1.5 million gallon per year demonstration plant for the production of  
7 renewable diesel and jet fuel located in St. Joseph Missouri.

8 16. Blue Sun Energy is led by a senior executive team with proven experience in  
9 building sales of premium-positioned, value-added commercial and industrial products,  
10 successful research and development disciplines and commercialization of process and product  
11 innovation and product development in rapid scale scenarios.

12 17. I was appointed to the Board of Directors in July 2010. I have over 40 years of  
13 financial and technology experience in a variety of senior level roles (CFO, COO, CEO,  
14 Advisory and Fiduciary Board) and have spent much of my career leading early-stage and  
15 emerging market companies through rapid scale to their next levels. My experience spans the  
16 crucial facets of rapid growth companies including, successfully concluding multiple capital,  
17 debt/equity transactions, business development and strategic planning, technology and business  
18 process implementation, mergers and acquisitions and private-to-public transactions.

19 18. Dr. Michael E. Gorton, M.D., a heart surgeon, engineer, entrepreneur, innovator  
20 and environmental advocate was appointed to the Board of Directors in April 2013. Dr. Gorton  
21 was Chairman of the Department of Cardiothoracic Surgery at the University of Kansas Medical  
22 Center during the largest growth, turn around in US history focusing on quality improvement and  
23 customer care. The program was recognized by *US News and World Report* for its leadership in  
24  
25  
26

1 cardiac care. The same innovative spirit and talent has led him as scientific advisor, director, and  
2 active member in multiple early-, mid-, and late-stage technology companies specializing in  
3 alternative liquid fuels including jet fuel, advanced biomass and feed crop, micronutrient DNA  
4 radiation protectant, minimally invasive spine implants, wave, solar, and gasification  
5 technologies. Dr. Gorton has worked with the US FDA in regulatory assessment and approval of  
6 device applications along with refinement of the Society of Thoracic Surgeons world wide data  
7 base for tracking and betterment of outcomes in cardiac and thoracic surgery. He was in charge  
8 of a large multi-specialty product line including quality control and finance management.  
9

10 19. Mr. Christopher W. Guill was appointed to the Board in April 2013. He is the  
11 President of Gold Hill Reclamations & Mining, and is the Managing Director of Juniper  
12 Resources, the majority owner of Blue Sun. His background includes new business development  
13 with Syngenta agribusiness, consumer product development and successful ecommerce startups.  
14 Christopher holds marketing and finance degrees from Boise State University.  
15

16 20. Mr. Bruce Baughman is the Chief Operating Officer. Mr. Baughman has over 32  
17 years' experience in heavy industrial manufacturing, agri/chemical-process, energy/biofuels,  
18 food manufacturing and facility and corporate management, including process design,  
19 maintenance engineering, process optimization and major capital construction project  
20 management. Mr. Baughman is responsible for directing Blue Sun's ongoing upgrade of the St.  
21 Joseph biodiesel processing facility in addition to assisting in setting the strategic direction of the  
22 company. Mr. Baughman's prior experience includes positions with ADM, DuPont/Solae, Kraft,  
23 Cargill, Abitec Corp, ITG GreenHunter and Mission New Energy. Mr. Baughman is a graduate  
24 of the University of Missouri, Rolla.  
25

26 21. Mr. Sean Lafferty is the Vice President of Technology and New Business. Mr.

1 Lafferty is one of the founders of Blue Sun. He previously has served as Vice President of  
2 Operations and as Secretary, Treasurer and Director during his time with Blue Sun. Mr. Lafferty  
3 has significant experience in the electric power and renewable energy fields, including serving as  
4 an Electrical Engineer for Exponential Engineering Co. He has 15 years of applied electrical  
5 engineering experience with a focus on power systems. Mr. Lafferty earned a B.S. in electrical  
6 engineering from Colorado State University.  
7

8 **Terra Bioenergy**

9 22. Terra Bioenergy, LLC ("Terra") is a Missouri limited liability company. Terra  
10 owns the real estate and improvements comprising the St. Joseph, Missouri biodiesel production  
11 facility operated by Blue Sun St. Joe's Refining under a Triple Net Commercial Lease, dated  
12 September 27, 2011 (as amended by the First Amendment to Triple Net Commercial Lease,  
13 dated December 19, 2012, the "Terra Lease"), by and between Terra and Blue Sun St. Joe's  
14 Refining.  
15

16 23. Terra was founded in 2006 by a group of Missouri farmers to build and operate a  
17 30 million gallons per year biodiesel production facility. Despite having invested tens of  
18 millions of dollars, including a \$15.5 million mortgage loan from Nodaway Valley Bank  
19 ("Nodaway") and FCS Financial, FCLA ("Farm Credit Services"), in 2008 when the refinery  
20 was nearing completion, the contractor went bankrupt leaving Terra with an unfinished facility  
21 and no access to additional working capital to complete, commission, or operate the facility.  
22

23 24. Under the terms of the Terra Lease, in 2011, Blue Sun agreed to complete,  
24 commission, and operate the biodiesel facility with a base monthly lease payments being made  
25 directly to Nodaway and Farm Credit Services up to the amount of Terra's monthly mortgage  
26 payments.

1           25.     At the time the original Terra Lease was executed, the parties estimated that  
2 completion of the refinery would require an additional \$3,750,000 investment by Blue Sun for  
3 the purchase and installation of equipment and processes to finish the plant.

4           26.     However, by the end of 2012 when the Terra Lease was amended, the parties had  
5 determined that the actual additional investment by Blue Sun to make the refinery operational  
6 would be closer to \$13,750,000 (the estimated Tenant Investment).

7           27.     The Terra Lease, as amended, had an initial term of three (3) years with options  
8 for Blue Sun to renew for four (4) additional one (1) year terms. The Terra Lease extends  
9 automatically unless Blue Sun notifies Terra at least 90 days prior to the end of the existing lease  
10 term that it does not want the lease extended. The parties are currently in the first of the four one  
11 (1) year renewal terms, which runs through September 27, 2015.

12           28.     The Terra Lease provides for Base Rent of \$110,000, increased by the 2012  
13 Amendment to \$165,000 per month, plus Additional Rent on a quarterly basis equal to 50% of  
14 Net Profits to the extent that cumulative Net Profit measured from the Commencement Date to  
15 the end of the applicable calendar quarter exceeds the lesser of the actual Tenant Investment  
16 made by Blue Sun and \$13,750,000 plus interest at 12% per annum on the cumulative Tenant  
17 Investment.

18           29.     To date, the St. Joseph refinery has never operated profitably, and Blue Sun's  
19 lease payments under the Terra Lease have been limited to paying Terra's Base Rent constituting  
20 the monthly mortgage payment due to Nodaway and Farm Credit Services and payments on the  
21 Farnum lease (described below).

22                           **Nodaway Valley Bank and Farm Credit Services**

23           30.     As discussed above, Terra financed its construction of the St. Joseph refinery in  
24



1 part through mortgage loans (the “Terra Debt”) obtained from Nodaway and Farm Credit  
2 Services. Nodaway originated the Terra Debt, but under the terms of a Loan Participation  
3 Agreement, effective as of February 29, 2008, as amended on February 16, 2009 and August 13,  
4 2009, Farm Credit Services is a 50% participant in the Terra Debt.

5  
6 31. Among other agreements, the Terra Debt is evidenced by a Construction and  
7 Term Loan Agreement dated as of February 29, 2008, a Completion Loan Agreement, dated as  
8 of August 13, 2009, a Promissory Note, dated February 29, 2008, in the original principal  
9 amount of \$10,747,000, a Promissory Note, dated August 13, 2009, in the original principal  
10 amount of \$3,000,000, a Security Agreement, dated February 29, 2008, a Deed of Trust and  
11 Security Agreement, dated as of February 29, 2008, recorded February 29, 2008 in the Official  
12 Records of Buchanan County, Missouri, and an Amended and Restated Forbearance Agreement,  
13 dated as of September 27, 2011 (the “Forbearance Agreement”).

14  
15 32. The Forbearance Agreement was executed by Terra, Nodaway, and Farm Credit  
16 Services contemporaneously with Blue Sun’s execution of the Terra Lease.

17 33. Under the terms of the Forbearance Agreement, among other things, the Maturity  
18 Date of the Terra Debt was extended to September 27, 2014, and the interest rate is the greater of  
19 5% per annum and the Prime Rate as published in the Wall Street Journal, determined monthly.

20  
21 34. Although the Terra Debt matured on September 27, 2014, Blue Sun continued to  
22 pay the banks the monthly Base Rent amount constituting the monthly principal and interest  
23 payments to Nodaway and Farm Credit Services through June 2015. Nodaway and Farm Credit  
24 Services recently noticed a default under the Forbearance Agreement after the July, 2015  
25 payment was not timely made.  
26

**Farnum Street Financial, Inc.**

35. In June 2011, Terra entered into a Lease Agreement (No. TE062711) with Farnum Financial Services, Inc. ("Farnum") for certain supplies, equipment, software, consulting, and installation services related to the completion of the St. Joseph refinery. The total original "equipment" cost on the Farnum lease was \$2,269,750.91. Terra, via agreement with Juniper Resources, LLC, provided Farnum with a \$605,244.75 security deposit under the terms of the Lease.

36. Juniper Resources, LLC, Blue Sun's largest shareholder and one of its largest creditors, also provided a \$500,000 letter of credit to support the Farnum Lease, and Blue Sun and Blue Sun St. Joe Refining each signed guaranties in favor of Farnum.

37. To date, Farnum has been paid in excess of \$3.4 million, including the \$1,105,244 of security deposits under the terms of the lease, all by Blue Sun, an amount well in excess of the original equipment cost.

38. The remaining balance due and owing on the Farnum lease is \$2,242,288.82; however, the equipment provided by Farnum is obsolete and has a liquidation value of less than \$300,000.

**Novozymes North America, Inc.**

39. When Blue Sun agreed to complete and operate the St. Joseph refinery, it carefully evaluated competing biodiesel production technologies before settling on an innovative enzyme transesterification process developed by Novozymes North America, Inc. ("Novozymes"). At the time, the Novozymes was successful in a laboratory setting in making biodiesel from higher free fatty acid (FFA) feedstock sources (available at a lower cost) that could not be used in more traditional biodiesel production. However, the process was unproven

1 on an industrial scale.

2 40. Blue Sun signed a Supply Agreement, dated December 15, 2011 (amended  
3 January 1, 2014), with Novozymes to purchase enzymes for use in its biodiesel production, and  
4 began what turned out to be a very difficult and arduous four-year project, at a cost of over six  
5 million dollars, to perfect this technology at industrial scale for use of enzymes in biodiesel  
6 production.  
7

8 41. By 2015, the Blue Sun technical team finally installed and perfected the Blue Sun  
9 MAX Process™, a patented process technology that allows the Novozymes' lipase enzyme to  
10 make biodiesel from any lipid feedstock available, including up to 100% free fatty acid material,  
11 and enables biodiesel production with the Novozymes enzyme. This breakthrough enabled Blue  
12 Sun to be the first biodiesel refiner in the world to successfully demonstrate Novozymes'  
13 enzymatic process at large industrial scale.  
14

15 **Tenaska**

16 42. Tenaska Commodities, LLC is a large domestic multi-commodity marketing and  
17 trading company that provides risk management, logistical and supply chain management  
18 services to the energy and agriculture industries. Tenaska Commodities transacts in 45 different  
19 energy and agriculture commodities, including in growing markets for advanced biofuels,  
20 renewable diesel and cellulosic ethanol.  
21

22 43. Until July 29, 2015, Tenaska and Blue Sun St. Joe Refining were parties to an  
23 Amended and Restated Feedstocks Supply and Biodiesel Sale Agreement, dated as of February  
24 19, 2015. Tenaska terminated the agreement on July 29, 2015 when it learned of the Blue Sun  
25 Debtors' eminent chapter 11 filings.  
26

44. Until then, Tenaska augmented Blue Sun's feedstock purchasing and B100 sales

1 function by providing its network of feedstock suppliers and B100 buyers to Blue Sun's trading  
2 team, and conducted inbound purchasing and outbound sales negotiations, respectively. Tenaska  
3 also handled all logistics (shipping, hedging and scheduling) related to delivering inbound  
4 feedstock supplies and outbound biodiesel shipments.

5  
6 45. As discussed in more detail below, in light of the termination of the Tenaska  
7 Agreement and continually worsening economic and industry conditions, the Blue Sun Debtors  
8 have elected to run the St. Joseph Refinery on a limited basis for only a few days postpetition to  
9 convert its remaining feedstock inventories into biodiesel, and then will be closing the refinery  
10 until economic and other conditions improve.

11  
12 **ARA and Chevron Lummas Global**

13 46. Applied Research Associates, Inc. ("ARA") and Chevron Lummas Global LLC  
14 ("CLG") have developed a Biofuels ISOCONVERSION Process (the "BIC Process") for  
15 converting fatty acid bio-derived plant oil feedstocks into fungible fuel products that can be  
16 substituted for petroleum fuels including jet kerosene, diesel and naphtha.

17 47. Blue Sun and ARA entered into a Cooperation and Collaboration Agreement,  
18 dated as of January 16, 2013, (the "ARA Agreement") for the purpose of demonstrating the  
19 commercial viability of the BIC Process through the design, construction, and operation of a  
20 Catalytic Hydrothermolysis (CH) demonstration system with a rated capacity of up to 100  
21 bbl/day to produce jet and diesel fuels for certification and demonstration testing and to  
22 document and demonstrate to ASTM, the Department of Defense, and the aviation industry that  
23 the BIC Process can be scaled up and produce specification-quality jet and diesel fuels that are  
24 100% equivalent with their petroleum counterparts.

25  
26 48. In accordance with the terms of the ARA Agreement, Blue Sun constructed and

operates a demonstration renewable biodiesel plant (the “CH Plant”), adjacent to the Terra/Blue Sun large biodiesel refinery, capable of producing 1.5 million gallons per year of renewable biodiesel jet fuel utilizing the BIC Process; and Blue Sun and ARA/CLG entered into a Technology License Agreement, dated January 7, 2013 under which Blue Sun is granted use rights relating to the BIC Process.

49. Blue Sun has already produced and supplied approximately 175,000 gallons of intermediate crude fuel and is in the process of completing production of an additional 220,000 gallons of renewable biodiesel jet fuel for testing by the U.S. Navy pursuant to the terms of the ARA Agreement.

50. The Blue Sun Debtors are in the process of retrofitting and upgrading the CH Plant for the purpose of resuming production beginning mid-September 2015 to complete the remaining production required under its U.S. Navy contract.

#### **Financial Performance and Events Leading to Chapter 11 Restructuring**

51. Despite being known and rated as a 30 million gallon per year (MGY) facility, the St. Joseph refinery has never produced more than 14.3 MGY. Until earlier this year, Blue Sun always believed that the constraining/limiting factor was the unique Novozymes enzymatic refining process. However, in early 2015, after Blue Sun closed the refinery and installed upgrades that cured bottlenecks related to the enzymatic process, it learned that the refinery has other design, software, and equipment constraints that limit maximum volume closer to 15 MGY. These constraints include automation and software, piping, tank storage, and logistics and material management. Blue Sun believes that an incremental \$2.5 – 5.0 million investment will be required to increase the refinery capacity from 15 MGY to 30 MGY name-plate as advertised.

1           52.     Blue Sun incurred a loss of \$4.9 million in 2014 and has experienced a \$5.8  
2 million net loss for the first six months of 2015.

3           53.     Biodiesel competes directly with petroleum based diesel fuel, and therefore  
4 biodiesel prices generally track the Heating Oil Index, the index used by the biodiesel industry to  
5 reflect diesel fuel prices. From June 2014 to July 2015, the Heating Oil Index dropped from over  
6 \$3.00 per gallon to \$1.66 per gallon. In addition, at the end of 2014, the Biodiesel Tax Credit or  
7 “federal blender credit,” a \$1.00 per gallon biodiesel tax credit originally passed by the U.S.  
8 Congress as part of the 2008 Farm Bill, expired. As a result, biodiesel prices have effectively  
9 declined nearly \$2.34 per gallon from July 2014 to July 2015 while the related feedstock and  
10 conversion costs have stayed relatively the same. As a result, all biodiesel producers throughout  
11 the domestic industry are experiencing massive operating losses.  
12

13           54.     Blue Sun’s industry advisors believe that only the financially strongest and lowest  
14 cost producers are operating currently and are doing so only with the hope that the Biodiesel Tax  
15 Credit will be retroactively enacted as part of the “Tax Extenders” bill for 2015, which will  
16 enable them to recoup a portion of their operating losses, or perhaps break even.  
17

18           55.     The Senate Finance Committee recently passed a tax extenders package that  
19 includes two-year extensions of tax credits for biodiesel, renewable diesel and cellulosic  
20 biofuels. The next step for the legislation is consideration by the full U.S. Senate, which has not  
21 yet been scheduled. The bill would extend incentives for biodiesel and renewable diesel for two  
22 years, through 2016, including the \$1.00 per gallon Biodiesel Tax Credit.  
23

24           56.     However, even if the Biodiesel Tax Credit is retroactively extended, producers  
25 like Blue Sun will not see any funds until Q1 2016 at the earliest meaning that many producers  
26 simply will not survive.

1           57. Renewable Fuel Standards (RFS) guidelines announced on June 1, 2015 proposed  
2 sales requirements for the industry of 1.70 billion gallons, an increase from 1.63 million gallons  
3 sold in 2014. However, 30% of this volume is now being satisfied by foreign sources, further  
4 damaging domestic producers. As a result, Tenaska has estimated that fully 1.0 billion gallons of  
5 U.S. biodiesel capacity (approx. 50% of total effective capacity) has been closed due to the  
6 severe economic conditions. The Terra/Blue Sun St. Joseph refinery is in danger of joining that  
7 group.  
8

9           58. Blue Sun and its subsidiaries operate on a calendar year accounting cycle.

10           59. As of December 31, 2014, on a consolidated basis, Blue Sun reported total assets  
11 of \$29,922,554, including: (i) current assets of \$12,999,252 consisting primarily of cash,  
12 accounts receivable (including Biodiesel Tax Credits due), inventory, and prepaid expenses; and  
13 (ii) property, plant & equipment of \$15,565,390, consisting of tenant improvements relating to  
14 the Terra/Blue Sun St. Joseph refinery and the cost of the CH demonstration plant.  
15

16           60. As of December 31, 2014, on a consolidated basis, Blue Sun reported total  
17 liabilities of \$33,604,498, including: (i) accounts payable totaling \$5,065,562; (ii) accrued  
18 payroll and employee benefits totaling \$217,284; (iii) current notes payable and accrued interest  
19 totaling \$22,468,318; and (iv) long term notes and accrued interest totaling \$5,539,945.  
20

21           61. On a consolidated basis, Blue Sun posted a Net Loss of \$4,865,498 for 2014.

22           62. As discussed above, Blue Sun's financial performance has continued to  
23 deteriorate in 2015.

24           63. For the six months ending June 30, 2015, on a consolidated basis, Blue Sun  
25 reported total assets of \$25,928,362, including: (i) current assets of \$7,262,122 consisting  
26 primarily of cash, accounts receivable (including Biodiesel Tax Credits due), inventory, and

1 prepaid expenses; and (ii) property, plant & equipment of \$17,308,328, consisting of tenant  
2 improvements relating to the Terra/Blue Sun St. Joseph refinery and the cost of the CH  
3 demonstration plant.

4  
5 64. For the six months ending June 30, 2015, on a consolidated basis, Blue Sun  
6 reported total liabilities of \$36,379,674, , including: (i) accounts payable totaling \$6,215,183; (ii)  
7 accrued payroll and employee benefits totaling \$211,154; (iii) current notes payable and accrued  
8 interest totaling \$24,338,424; and (iv) long term notes and accrued interest totaling \$5,227,849.

9  
10 65. For the six months ending June 30, 2015, on a consolidated basis, Blue Sun  
11 posted a Net Loss of \$5,774,566.

12  
13 66. For the past 12-18 months, Blue Sun has been exploring options for obtaining  
14 new capital to help the business survive until: (i) the Terra/Blue Sun St. Joseph refinery can be  
15 properly updated and expanded to achieve the 30 MGY capacity it originally was advertised it  
16 could produce, and (ii) industry economic conditions improved to the point where the business  
17 could reach at a minimum breakeven performance.

18  
19 67. In April 2015, Terra and Blue Sun signed a letter of intent with the John and  
20 Joann Horton Family Limited Partnership (the "Horton FLP") outlining a merger and  
21 recapitalization plan for the business.

22  
23 68. John Horton, the General Partner of Horton FLP, was formerly a senior financial  
24 executive with GE Gas Turbines, GE Military Aircraft Engines, and Honeywell Aircraft  
25 Engines. Mr. Horton also has over 15 years' experience in private equity and venture capital  
26 including roles as (a) CFO for a private equity funded company, Omega Cabinetry, (b) Managing  
Director of a New York based private equity firm, Butler Capital, with over \$2.0 billion of  
capital; (c) Founding Operating Partner of a private equity firm, Intervale Capital, focused on



1 energy services with over \$1.28 billion of committed capital; and (d) Outside Director for  
2 numerous portfolio companies of sophisticated private equity firms, including First Reserve,  
3 Clayton Dubilier & Rice, and JPMorgan Chase.

4  
5 69. In broad strokes, Horton FLP agreed, subject to due diligence and other  
6 contingencies, to fund up to \$5.0 million dollars to a merged and recapitalized Newco that would  
7 acquire all of the assets of Terra and Blue Sun, and would assume certain liabilities, including  
8 the Nodaway/Farm Credit Services mortgage debt, as restructured.

9  
10 70. The parties had hoped to accomplish the merger and recapitalization of the  
11 business through an out-of-court restructuring, and attempted to do so. In that regard, since April  
12 30, 2015, Horton FLP has loaned \$3.0 million on a secured basis to Blue Sun. However, over  
13 the past several months, as industry conditions continued to worsen and new operational issues  
14 with the St. Joseph refinery have continued to emerge, it has become clear that the businesses  
15 cannot survive absent a chapter 11 restructuring.

16 **Operational Changes**

17  
18 71. From an operational standpoint, Blue Sun already implemented the following  
19 cost-savings measures prior to the chapter 11 filings: (a) the St. Joseph refinery was transitioned  
20 from a 7 to 5 day operating schedule, (b) employee and consultant headcount was reduced from  
21 84 to 51 employees, (c) salaries of senior management were reduced by 17%, and (d) the Blue  
22 Sun Energy Denver corporate office was closed.

23  
24 72. Postpetition Blue Sun intends to operate the St. Joe Refinery for 4 to 5 days to  
25 complete its wind-down pursuant to the termination of the Tenaska agreement by (a) finishing all  
26 work in process and converting all unsoiled feedstock inventories into biodiesel (approx. 650,000  
gallons), and (b) selling the remaining soiled feedstock inventory in the cattle feed market

1 (approx. 250,000 gallons).

2 73. Once the Tenaska wind down run is completed, Blue Sun will shutter the  
3 biodiesel plant temporarily and reduce its existing work force to the minimum level necessary to  
4 operate only the CH Plant and the remaining business.

5 74. The Blue Sun Debtors will then run the CH Plant through the end of the year to  
6 complete their requirements under the U.S. Navy contract with ARA by, (a) continuing  
7 retrofitting in order to start production in the 3rd week of September, and (b) running  
8 continuously thereafter until they have delivered the required 220,000 gallons of crude  
9 intermediate to the fractionator/hydro-treater (estimated to occur by Late November or early  
10 December, 2015).

11  
12  
13 **The Proposed Restructuring**

14 75. The Blue Sun Debtors have filed all required petitions, lists of twenty largest  
15 unsecured creditors, master mailing matrices, lists of equity security holders, schedules and  
16 statements of financial affairs, and the “first day” motions described in more detail below. In  
17 addition, in short order, the Blue Sun Debtors intend to file a Joint Plan of Reorganization (the  
18 “Plan”) and Disclosure Statement in Support of Joint Plan of Reorganization that provides for the  
19 successful reorganization of the debtors on an expedited basis. It is anticipated that the Plan will  
20 include Terra Bioenergy, Inc., which is in the process of preparing its own Chapter 11 petition  
21 and will seek, with the approval of the Blue Sun Debtors, joint administration with the debtors’  
22 cases.

23  
24 76. Horton FLP has agreed to provide up to \$1,100,000 of debtor in possession  
25 financing secured by liens against all assets of the Blue Sun Debtors and a superpriority  
26 administrative claim.

1           77. Under the Plan, it is anticipated that (a) Terra and each of the Blue Sun  
2 subsidiaries will be consolidated with Blue Sun Energy, (b) all of the existing equity interest in  
3 Terra, Blue Sun, and the Blue Sun subsidiaries will be cancelled, and (c) “New Blue Sun” will be  
4 formed to acquire 100% of the equity in the Reorganized Debtor.

5  
6           78. The Reorganized Debtor will assume certain executory contracts and unexpired  
7 leases critical to the continued operation of the business, including the existing agreements with  
8 ARA and CLG.

9           79. All administrative claims will be paid in full on the effective date of the Plan.

10           80. All priority tax claims within the meaning of 11 U.S.C. § 507(a)(8) will be paid in  
11 full and in cash within five (5) years of the petition date through regular equal monthly  
12 installments of principal and interest at the statutory rate determined in accordance with 11  
13 U.S.C. § 511.

14  
15           81. Any priority non-tax claims will be paid in full within five (5) years of the  
16 petition date through regular equal monthly installments of principal and interest.

17           82. At the option of the plan proponents, the Reorganized Debtor will either (i)  
18 surrender the collateral securing the Nodaway/Farm Credit Services mortgage, or (ii) pay the  
19 Nodaway/Farm Credit Services secured claim, in a principal amount to be determined pursuant  
20 to 11 U.S.C. § 506(c) based on the value of the existing collateral securing the loan, with interest  
21 at the rate of 4% per annum, through monthly principal and interest payments based on a 30 year  
22 amortization schedule beginning 30 days after the Effective Date of the Plan, and payment in full  
23 within five (5) years of the Effective Date of the Plan. The Nodaway/Farm Credit Services  
24 deficiency claim will be treated in the same manners as all other unsecured claims against any of  
25 the debtors.  
26

83. All creditors holding allowed unsecured claims against the any of the debtors will have the option to receive (a) a lump sum cash payment, on the later of the date that the claim is allowed by final order of the Bankruptcy Court or six months after the Effective Date of the Plan, equal to 5% of the allowed amount of such creditor's claim; or (b) its pro rata share of a portion of the equity in New Blue Sun. Any creditor that fails to make an election will be deemed to have elected to receive the 5% cash payment.

84. On the Effective Date, the stock of New Blue Sun will be allocated as follows: (a) 53% to Horton FLP, or its nominee, in exchange for (i) a credit bid by Horton FLP of its \$3.0 million prepetition secured debt and its \$1,100,000 of debtor-in-possession financing (if approved by the Court), and (ii) a subordinated note against New Blue Sun, (b) approximately 35.0% reserved for unsecured creditors, and (c) approximately 12.0% reserved for a management bonus pool.

## First Day Motions

85. In order to efficiently administer the Chapter 11 case and accomplish a reorganization of the companies, the Blue Sun Debtors immediately will need, among other things: (i) an order providing for the joint administration of the Related Cases; (ii) authorization to retain Gallagher & Kennedy, P.A. (“G&K”) as general bankruptcy and restructuring counsel; (iii) authorization to retain Lentz Clark Deines PA (“LCD”) as local bankruptcy counsel; (iv) authorization to retain MCA Financial Group, Ltd. (“MCA”) as financial advisor; (v) authorization to obtain up to \$1,100,000 of debtor in possession financing, including sufficient funds to cover short-term cash needs on an emergency basis, from Horton FLP; and (vi) authorization to pay certain prepetition employee wages and continue to honor employee benefits in the ordinary course of business.

1 86. Accordingly, the Debtors have filed for the Court's consideration and approval on  
2 an interim and final basis, a number of motions and applications (the "First Day Motions") that  
3 are necessary to enable the Blue Sun Debtors to operate in Chapter 11 with a minimum  
4 disruption and loss of productivity. The Blue Sun Debtors respectfully request that each of the  
5 First Day Motions be granted as a critical element in achieving an efficient and successful  
6 reorganization of the company. The Blue Sun Debtors have requested expedited consideration of  
7 the First Day Motions to avoid interruption of business and to promote an efficient and effective  
8 reorganization. A description of each of the First Day Motions is provided below.

10 **Motion for Joint Administration**

11 87. The Blue Sun Debtors have requested that the Court enter an Order transferring  
12 the assignment of all of the cases to the Judge assigned to the lowest numbered case.<sup>1</sup> Joint  
13 administration is necessary and appropriate to preserve judicial and estate resources, avoid  
14 duplication of efforts and reduce the time and expense associated with administering the chapter  
15 11 cases.

17 88. To the best of my knowledge, there are no conflicts of interest between the  
18 debtors' estates. Although intercompany balances exist, the amount and existence of the  
19 obligations are not disputed.

20 **Applications For Authorization To Retain G&K, LCD, And MCA**

21 89. The Blue Sun Debtors have filed applications to employ G&K, LCD, and MCA  
22 as estate professionals (the "Professionals").

24 90. The professional services that the Blue Sun Debtors require, and have requested that  
25 G&K perform in the case, include the following:

26 <sup>1</sup> As discussed above, it is anticipated that Terra will file a motion seeking joint administration of its case with those of the Blue Sun Debtors.

- a. provide legal advice with respect to the Blue Sun Debtors' powers and duties as debtors-in-possession in the continued operation of their businesses and management of their property;
- b. prepare necessary applications, motions, answers, orders, reports and other legal papers;
- c. appear in Court and protect the interests of the Blue Sun Debtors before the Court;
- d. assist the Blue Sun Debtors with financing and with the collection and disposition of assets, by sale or otherwise;
- e. assist the Blue Sun Debtors with their ongoing corporate and non-defense regulatory legal needs;
- f. represent the Blue Sun Debtors in any future collection or other litigation commenced (or to be commenced) by and/or against them;
- g. assist the Blue Sun Debtors in preparing and confirming a Chapter 11 plan; and
- h. represent the Blue Sun Debtors in connection with all aspects of their bankruptcy cases and perform all legal services which may be necessary and proper for the Blue Sun Debtors in these proceedings.

91. The Blue Sun Debtors have filed an application to employ LCD as local bankruptcy and special conflicts counsel in the Related Cases to assist G&K, as necessary and appropriate.

92. G&K and LCD will coordinate their work efforts on behalf of the Blue Sun Debtors to ensure that there is no unnecessary duplication as a result of the dual representation.

93. The professional services that the Blue Sun Debtors require, and have requested that MCA perform in the case, include the following:

- a. Assist with the preparation of an interim cash needs analysis and 13-week cash flow;
- b. Develop budgets and forecasts to determine financing needs during the case and post-petition;
- c. Advise on business reorganization matters including operations, financial and strategic;

- d. Assist with the preparation and the filing of a Chapter 11 bankruptcy including the preparation of the Statements and Schedules, Statement of Financial Affairs, and creditor matrix among other items;
- e. Provide bankruptcy financial advisory services, including expert witness reports and testimony related to interest rates, plan feasibility and valuation, as necessary; and
- f. Assist the Blue Sun Debtors with other matters related the cases, as requested, necessary, and appropriate.

94. The Blue Sun Debtors will ask G&K, LCD and MCA (and any other professionals employed in the case) to file interim fee applications on a monthly basis to allow the Debtors, the United States Trustee, creditors and other parties in interest an opportunity to monitor and control the costs and fees of estate Professionals on a current basis.

95. The Blue Sun Debtors have filed a motion to approve procedures for payment of interim compensation to the estate professionals retained in the Related Cases.

#### **Motion To Approve Debtor in Possession Financing**

96. The Blue Sun Debtors do not have sufficient available sources of working capital to operate their businesses without working capital financing. Based on the debtors' consolidated 13-week cash budget (the "Budget"), the Blue Sun Debtors likely will run out of cash in the short term causing immediate and irreparable harm to the debtors and their estates.<sup>2</sup>

97. The Blue Sun Debtors have been actively seeking working capital financing for several months to assist the company through the current industry-wide economic slowdown.

98. Subject only to Bankruptcy Court approval, prepetition, the Blue Sun Debtors and Horton FLP executed a *Debtor-In-Possession Credit And Security Agreement* (the "Credit Agreement") pursuant to which Horton FLP has agreed to provide up to \$1,100,000 of debtor in

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<sup>2</sup> A copy of the Budget is attached to the Debtors' emergency motion to approve debtor-in-possession financing.

possession financing to the Blue Sun Debtors. The primary terms of the financing are as follows:<sup>3</sup>

- a. Maximum Loan Amount: \$1,100,000 available in accordance with the approved Budget, including an interim amount of \$500,000 to be made available immediately upon entry of an order approving the financing on an interim basis to cover actual and necessary expenses of the Blue Sun Debtors that must be paid prior to the final hearing.
- b. Use of Proceeds: Borrowers shall use the proceeds of the loan for (a) working capital; (b) for payment of (i) costs of administration of the Case, and (ii) the fees and expenses described under the Credit Agreement; and (c) such Pre-Petition obligations as the Bankruptcy Court shall approve, in each case in a manner consistent with the terms and conditions of the Interim Order and Final Order.
- c. Collateral: all personal property of the Blue Sun Debtors, subject to any existing liens, and a super-priority administrative expense claim pursuant to 11 U.S.C. § 364(c) and (d). The collateral and super-priority administrative claim are subject to a \$50,000 carve-out for the debtors' professionals and any professionals retained by any statutory committee appointed in the cases.
- d. Interest Rate: 10% with an increase to 15% while any event of default exists.
- e. Expenses: The Borrowers will be responsible for all attorneys' fees and expenses incurred by lender.
- f. Cash Collateral: Horton FLP has consented to the use of cash collateral by the Debtors in accordance with the approved Budget.
- g. Maturity Date: If not paid sooner as provided in the Credit Agreement or any of the Loan Documents, the principal balance outstanding, together with all accrued interest and all other amounts owed under the Credit Agreement shall be due and payable on the earlier to occur of: (1) the effective date of a plan of reorganization confirmed in the Case, (2) entry of an order converting any of the cases to a case under Chapter 7 of the Bankruptcy Code, (3) entry of an order dismissing any of the cases, (4) entry of an order appointing an interim or permanent trustee in the Case, or an examiner with expanded powers to operate or manage the financial affairs, business, or reorganization of Blue Sun Debtors, or (5) entry of an

<sup>3</sup> A copy of the Credit Agreement attached as an exhibit to the Blue Sun Debtors' emergency motion to approve debtor-in-possession financing. To the extent of any inconsistency between this summary and the Credit Agreement, the Credit Agreement controls.



1 order approving a sale of substantially all of the Blue Sun Debtors' assets  
2 under Section 363 of the Bankruptcy Code; or (ii) December 31, 2015 (the  
3 "Maturity Date").

4 h. Payments: all amounts due and owing must be paid on the Maturity Date;  
5 monthly accrued interest will be added to the principal balance and  
6 thereafter will accrue interest at the applicable rate.

7 i. Stay Relief: automatic stay is modified to permit the Blue Sun Debtors to  
8 grant the liens and super-priority administrative claims, perform acts  
9 required under the loan documents, and incur the obligations under the  
10 loan documents. The Automatic Stay also is modified to allow the Lender  
11 to exercise all rights and remedies under the Credit Agreement, subject to  
12 the notice provisions contained in the interim DIP Order.

13 99. The Blue Sun Debtors do not have a prepetition working capital lender. No  
14 creditor has, or to the best knowledge of the Blue Sun Debtors claims, a lien in the Blue Sun  
15 Debtors' cash collateral, with the exception of:

16 a. Horton FLP, which has a prepetition lien and security interest in  
17 substantially all of the assets of the Blue Sun Debtors;

18 b. LREP Arizona, LLC, which has a security interest against the remaining  
19 amounts due to Blue Sun St. Joe Refining for 2014 biodiesel blender  
20 credits, which collateral Horton FLP released prepetition to facilitate a  
21 \$700,000 bridge loan to the Debtors by LREP Arizona, LLP.

22 c. Tenaska, which has a security interest in all of the Debtor's work in  
23 process and proceeds thereof. The Debtors do not intend to use any  
24 proceeds of Tenaska's collateral pending the wind-down of the Tenaska  
25 agreement and payment of all secured obligations owing to Tenaska.

26 100. The proposed debtor-in-possession financing will not prime any existing liens.

101. The ability of the Blue Sun Debtors to obtain working capital financing and  
liquidity through the proposed financing on an emergency basis is critically important. As  
evidenced by the Budget, absent the requested financing, the Blue Sun Debtors will have  
insufficient cash to meet payroll, complete the wind-down of the St. Joe Refinery, and meet other  
operating expenses in the short term making it impossible for the Blue Sun Debtors to continue  
to operate and perform during the case.

1           102. The Blue Sun Debtors were unable to obtain postpetition on an unsecured basis  
2 allowable under section 503(b)(1) as an administrative expense; and have been unable to obtain  
3 debtor in possession financing absent the Blue Sun Debtors granting the proposed lender a lien  
4 on all assets of their respective estates.

5  
6           103. The debtor-in-possession financing and the terms of the Credit Agreement were  
7 negotiated in good faith and at arms-length by the Blue Sun Debtors and Horton FLP. Under the  
8 circumstances, the terms of the Credit Agreement are the most favorable terms available to the  
9 Blue Sun Debtors, and are fair and reasonable. I believe the terms of the Credit Agreement  
10 reflect the Blue Sun Debtors' exercise of prudent business judgment consistent with their  
11 fiduciary duties, and the liens to be granted in exchange for the financing are supported by  
12 reasonably equivalent value and fair consideration.

13  
14           **Motion to Pay Prepetition Employee Wages, Salaries and Benefits**

15           104. To minimize the personal hardship that employees will suffer if prepetition  
16 employee-related obligations are not paid when due and to maintain morale of the Blue Sun  
17 Debtors' workforce during this critical time, the Blue Sun Debtors seek, on an emergency basis,  
18 the entry of an interim order and a final order authorizing them: (a) to pay and honor certain  
19 prepetition claims that remain outstanding as of the petition date for, among other things, (i)  
20 wages, salaries and other compensation, (ii) federal and state withholding taxes and other  
21 amounts withheld or deducted (e.g., employees' share of health insurance premiums), and (iii)  
22 reasonable and customary business expenses that are reimbursable by the Blue Sun Debtors  
23 under company policy; and (b) to pay and honor certain prepetition claims that remain  
24 outstanding as of the petition date related to (i) employee health benefits, (ii) insurance benefits,  
25 and (iii) other employee benefits that the Blue Sun Debtors have historically paid in the ordinary  
26

1 course of business.

2 105. In addition, the Blue Sun Debtors seek an order authorizing and directing banks  
3 and other financial institutions to receive, process, honor, and pay all checks presented for  
4 payment and electronic payments related to the employee obligations and benefits.

5 106. On a consolidated basis, prepetition the Blue Sun Debtors employed 84 people.  
6 The number of employees was reduced shortly before the petition date to 51.

7 107. The Blue Sun Debtors estimate that their next payroll is approximately \$125,000  
8 for the period beginning July 19, 2015 and ending August 1, 2016. However, no single  
9 employee is owed wages in excess of the statutory priority cap.

10 108. If the proposed debtor-in-possession financing is approved, as requested, the Blue  
11 Sun Debtors will have sufficient funds available to pay the gross bi-weekly wages due on August  
12 7, 2015 and to honor all Employee Obligations and Benefits going forward.

13 109. The Blue Sun Debtors' employees perform a variety of functions critical to the  
14 operation of the business. The employees' skills, knowledge, and understanding of the business  
15 are among the Blue Sun Debtors' most valuable assets. If prepetition compensation and benefit  
16 amounts are not received by the employees in the ordinary course, they will suffer personal  
17 hardship and unnecessary distraction from their duties. Such a result obviously would destroy  
18 employee morale and may result in unmanageable employee turnover, causing immediate and  
19 pervasive damage to the Blue Sun Debtors' ongoing business operations. Any significant  
20 deterioration in morale at this time will substantially and adversely affect the Blue Sun Debtors  
21 and their ability to function, resulting in immediate and irreparable harm to the Blue Sun Debtors  
22 and their estates.

**Additional First Day Filings**

110. In addition to the motions, applications, and requests set forth above, the Blue Sun Debtors also filed the following:

- a. Notice of Designation as Complex Chapter 11 Case;
- b. Disclosure of Compensation;
- c. Corporate Ownership Statement
- d. Emergency Motion for Expedited Hearing on First Day Motions
- e. Local Rule 2015-2(A) and (B) Statements
- f. A Motion to Approve Procedures for Interim Compensation and Reimbursement of Professionals Fees
- g. A motion to set a bar date for filing proofs of claims; and
- h. A motion to limit notice.

I declare under penalty of perjury under the laws of the United States of America, that all of the statements that I have made in this Declaration are true and correct to the best of my knowledge, information and belief. If called to testify in this matter, I would testify as stated in this Declaration.

RESPECTFULLY SUBMITTED this 3rd day of August, 2015.

/s/Jerry Washburn  
Jerry Washburn  
Vice President, CFO, and Director  
Blue Sun Energy, Inc.